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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re OWEN C., a Person Coming Under  
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

MEGAN C.,

Defendant and Respondent,

JAMES C.,

Defendant and Appellant;

OWEN C.,

Appellant.

D055191

(Super. Ct. No. NJ14096)

APPEALS from a judgment of the Superior Court of San Diego County, Blaine K.

Bowman, Judge. Appeals dismissed.

In May 2009 the juvenile court entered a jurisdictional finding (Welf. & Inst. Code, § 300, subd. (e));<sup>1</sup> removed seven-month-old Owen C. from the custody of his father, James C.; and placed Owen with his mother, Megan C. The court found the San Diego County Health and Human Services Agency (the Agency) had satisfied its obligation to "investigate the circumstances leading to [Owen's removal] and advise the court whether . . . reunification [was] likely to be successful" (§ 361.5, subd. (c)). The court ordered family maintenance services (§ 362, subd. (b), § 364, subds. (b), (c)) for Megan and denied reunification services for James (§ 361.5, subd. (b)(5), (b)(6)). James and Owen appeal.

James contends the jurisdictional finding is not supported by substantial evidence, the Agency failed to meet its investigatory obligation and the court abused its discretion by denying him reunification services. Owen contends reunification services were not at issue because he was not removed from both parents' custody and that it was in Owen's best interests for James to receive family maintenance services. We dismiss the appeals.

## I. BACKGROUND

### A. *THE PETITION*

Megan became pregnant shortly after she and James began dating and just before James began a six-month military deployment to Iraq. In September 2008, one month after James returned, he married Megan and Owen was born. James had a difficult time readjusting to civilian life.

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

In December 2008 the Agency filed a dependency petition and Owen was detained in foster care. The petition alleged Owen "suffered severe physical abuse, including a skull fracture, intra cranial hemorrhage, retinal hemorrhage, and a fractured finger inflicted by [James]." In January 2009 the Agency filed an amended petition adding an allegation that Megan "knew or reasonably should have known [James] was physically abusing [Owen]." We describe the underlying evidence and proceedings below.

#### *B. THE JURISDICTIONAL HEARING*

In October 2008, when Owen was two weeks old, James took him to the pediatrician. James told the doctor Owen had begun to roll off a bed and James grabbed him to prevent a fall. There were bruises on Owen's trunk and back that might have resulted from this incident. There were also unexplained pinpoint hemorrhages on Owen's right eyelid and around his right ear.

In early December 2008 Owen became more lethargic and irritable. His sleeping and eating habits changed. His right eye deviated. On December 16 the pediatrician noted Owen's head circumference had increased dramatically. On December 17 an ultrasound revealed large fluid collections in Owen's head. On December 18 an MRI and a CT scan revealed a right parietal skull fracture, an intracranial hemorrhage and a large amount of subdural or subarachnoid fluid creating pressure on the brain. Owen also had a fracture of the right pinkie finger that was less than two weeks old, multiple retinal hemorrhages and a vitreous hemorrhage. He had recently suffered at least one episode of head trauma. On December 19 shunts were surgically inserted in his head to relieve the

life-threatening pressure. The surgery clarified that the fluids were in the subdural space, not the subarachnoid space.

The only people who cared for Owen were Megan, James and two relatives. There was no evidence the relatives caused Owen's injuries. On December 19, 2008, an Agency social worker interviewed James and Megan. James gave three possible explanations for Owen's injuries. First, James put Owen on the floor to play and "a couple of times . . . put him down too hard" and heard "his head make a sound." Second, on November 29 James "jogged down [a] mountain too fast" with Owen strapped to his chest by a bungee. Third, the finger fracture might have occurred when James removed Owen from his car seat. Megan related two incidents that might have caused Owen's head injuries. First, "a week and a half ago" James tried to place Owen on all fours and Owen's head hit the carpeted floor, bruising the left side of his face. Second, James ran with Owen in a carrier on his chest and Megan then hit Owen's head on the car seat when changing his diaper.<sup>2</sup>

On December 20, 2008, James told police detectives that on December 5 he had picked up Owen from his crib and unintentionally dropped him four or four and one-half feet to the laminate floor. Owen landed on the back of his head. James said he had not told the Agency social worker about this incident because he did not want to be arrested. On December 22 James told a hospital social worker he had unintentionally dropped

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<sup>2</sup> One of the relatives reported Megan had told her that James had tripped while holding Owen and Owen had hit his head on a picture on the wall.

Owen "two weeks ago on the hard wood floor"<sup>3</sup> and Owen's injuries had resulted when James dropped him on another occasion. James also acknowledged he had shaken Owen a few times. Megan said James was "abrasive" with Owen, demonstrating with a "shaking motion."

On December 29, 2008, James admitted to the Agency social worker that he had injured Owen on the following occasions. In early October James grabbed Owen to keep him from falling off the bed. On October 17 and November 15 James was aggressive with Owen. On November 1 James shook Owen. On November 22 James was aggressive with Owen and shook him. On November 29 James ran down a mountain with Owen. On December 5 James dropped Owen from a height of four to five feet. On December 13 James was aggressive with Owen and came close to shaking him and Owen received a bump on the eye.

James was arrested on December 29, 2008, and charged with four counts of child cruelty and one count of inflicting injury on a child. James admitted to a police detective that he had dropped Owen 30 times, including five times when he was angry at Owen, and that he had shaken him twice. James said he had difficulty managing his anger and took full responsibility for Owen's injuries. James said he knew shaking Owen was wrong and that shaking and dropping could hurt him.

In January 2009 the criminal court ordered that James have no contact with Owen. In February a developmental evaluation revealed Owen had gross motor delays. In

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<sup>3</sup> James did not take Owen to the pediatrician after dropping Owen on the wood floor.

March a blood clot was surgically removed from Owen's right eye. The surgeon reported the clot likely resulted from the brain hemorrhage and intentional injury and it was unlikely Owen would be able to read with that eye.

Child abuse expert and physician Premi Suresh examined Owen, reviewed his medical records and interviewed James and Megan. James and Megan did not report any history of trauma and Dr. Suresh concluded Owen's condition was consistent with inflicted injury. Dr. Suresh believed shaking and an impact to the head could explain the hemorrhages in Owen's eyes and head. Shaking or a fall from a significant height could cause retinal hemorrhaging. If Megan hit Owen's head on the car seat with enough force, it could have caused a skull fracture. Injuries such as Owen's could result from being thrown and typically occurred after severe accidents, inflicted trauma or physical abuse. Such injuries could be caused by forceful or violent shaking, except the skull fracture, which required an impact to the skull, and the finger fracture, which required torquing or direct trauma to the finger. Owen's skull fracture, intracranial bleeding and pressure could have all been caused by one incident.

Dr. Suresh testified cranial and retinal hemorrhages would not result if James had jogged downhill with Owen. If an infant was placed on all fours, fell and hit the side of his face, a skull fracture would not typically result. Owen could not have almost rolled off a bed because two-week-old infants cannot roll. A linear fall of three to five feet could cause a skull fracture, a small intracranial hemorrhage directly under the fracture, and minimal retinal hemorrhages, but not the large fluid collections, extremely elevated intracranial pressure, extensive vitreous and retinal hemorrhages or subdural hemorrhage

Owen sustained. A subdural hemorrhage such as Owen's was not usually seen after a linear fall or an accidental fall, but typically occurred after a motor vehicle accident or a fall from a significant height, such as a two-story window.

At trial James argued Owen's injuries were caused by accidental trauma when he jogged down the mountain with Owen, shook him twice when frustrated, set him on the wood floor and dropped him twice from a distance of four feet. James also suggested the injuries were caused by a preexisting condition, hydrocephalus.<sup>4</sup> Neither James nor Megan had told Dr. Suresh that Owen had hydrocephalus, although they spoke in depth about his medical history. Dr. Suresh testified the dramatic increase in Owen's head circumference over the course of a month was not consistent with hydrocephalus, his medical records contained no report of that condition and hydrocephalus would not explain his fractured skull and retinal hemorrhaging.

### *C. THE DISPOSITIONAL HEARING*

James testified that through the military, he had participated in and learned from services relating to stress and anger management and parenting. He had attended one therapy session and was willing to do anything the Agency asked. James's parenting instructor testified James had "actively and enthusiastically" completed 11 two-hour sessions of the 12-session course. The paternal grandmother testified that in October 2008 Owen smiled at James "all the time" and did not seem afraid and James acted

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<sup>4</sup> James described Owen's condition as internal hydrocephalus, an accumulation of fluid in the ventricles of the brain, and distinguished it from external hydrocephalus, an accumulation of fluid in the brain's cavities. Dr. Suresh described hydrocephalus as an accumulation of fluid in the ventricles or cavities.

appropriately; in January 2009 James was extremely concerned about Owen's injuries. The social worker testified regarding the Agency's investigation and recommendation that James be denied reunification services.

The court found it would be in Owen's best interests to be placed with Megan and noted it could not find by clear and convincing evidence that returning Owen to her would present a substantial danger (§ 361, subd. (c)(1)). It removed Owen from James's custody (*ibid.*), placed Owen with Megan on condition that James have no contact with Owen and ordered family maintenance services for Megan. Citing section 361.5, subdivision (b)(5) and (b)(6), the court denied James's request for services.

#### *D. POSTOPINION EVENTS*

Our opinion was filed on January 6, 2010. On January 21, the Agency filed a petition for rehearing, arguing, *inter alia*, the appeals should be dismissed as moot. With the petition the Agency filed a request for judicial notice and a motion to augment the record with additional evidence. We granted the petition and directed the parties to submit supplemental briefing on the questions whether this court should grant the request for judicial notice and whether the appeals should be dismissed as moot. All parties have responded.

## II. DISCUSSION

The Agency's motion to augment the record includes copies of three documents dated November 23, 2009: a juvenile court minute order terminating dependency jurisdiction; a family court order granting Megan legal and physical custody of Owen, with supervised visitation for James if the criminal no contact order is lifted; and an



addendum report. The juvenile court's minute order is the subject of the Agency's request for judicial notice.

We grant the request for judicial notice of the juvenile court's order and, on our own motion, take judicial notice of the family court's order. (Evid. Code, §§ 452, subd. (d)(1), 459; *In re Sabrina H.* (2007) 149 Cal.App.4th 1403, 1417.) We deny the motion to augment the record. (*Sabrina H.*, at p. 1416.) Our judicial notice does not contravene *In re Zeth S.* (2003) 31 Cal.4th 396 for several reasons. First, the postjudgment evidence here consists of orders of the juvenile and family courts, not an unsworn statement of counsel. (*Id.* at p. 407.) Second, taking judicial notice of the orders will not overturn a judgment terminating parental rights or impair "the juvenile law's purpose of 'expediting the proceedings and promoting the finality of the juvenile court's orders and judgment.' " (*In re Salvador M.* (2005) 133 Cal.App.4th 1415, 1421, quoting *Zeth S.*, at p. 413.) Third, the orders relate solely to the question whether the appeals should be dismissed as moot, not to the merits of the appeals or the correctness of the judgment. (*In re Josiah Z.* (2005) 36 Cal.4th 664, 676, citing *Zeth S.*, at p. 413.)

The judicially noticed orders, neither one of which has been appealed, show that dependency jurisdiction has been finally and validly terminated. Thus, there is no viable relief we can grant. James has access to the family court to address custody issues. We dismiss the appeals as moot.

DISPOSITION

The appeals are dismissed.

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HUFFMAN, J.

WE CONCUR:

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McCONNELL, P. J.

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McINTYRE, J.